lina, 189 U. S. 426; *Parker* v. *State* (Tex. Cr. R.), 65 S. W. 1066. That the grand jury finding the indictment, and the jury trying the case, against a colored person. were composed wholly of the white race, falls short of showing that any civil right was denied, or that there was any discrimination because of color or race. *Virginia* v. *Rives,* 100 U. S. 313. When negroes are not excluded from juries by the law, or by the administration of the law, merely by reason of their color, but it happens that no colored person is on the jury convicting an accused negro, the accused is not deprived of his rights. *Thomas* v. *State,* 49 Tex. Cr. R. 633, 95 S. W. 1069. A refusal of the court to allow a modification of the venire, so that a portion of the jury shall be composed of the defendant's own race, does not deny him any right or privilege secured by law. *Virginia* v. *Rives, supra.* A prisoner is entitled to a trial by a jury of his peers, and not to a trial by a jury of any particular color or complexion. *Lawrence* v. *Commonwealth,* 81 Va. 484; *State* v. *Sloan,* 97 N. C. 499, 2 S. E. 666.

CONSTITUTIONAL LAW—VESTED REMAINDER IN PERSON SUI JURIS—SALE BY ORDER OF COURT.—A statute made provision for the sale of a vested remainder in a person sui juris by an order of court at the instance of the tenant by the curtesy or dower, when it is made to appear that the interest of all parties will be promoted by such sale. *Held,* the statute is unconstitutional in providing for the sale of the property of a person sui juris without his consent as an unwarrantable interference with the rights of property and as denying the equal protection of the laws. *Curtis* v. *Hiden* (Va.), 84 S. E. 664. See NOTES, p. 615.

CRIMINAL LAW—ASSAULT AND BATTERY—AUTOMOBILES—NEGLIGENT DRIVING—CRIMINAL INTENT.—The defendant was indicted for assault and battery for an injury inflicted upon a pedestrian while driving an automobile at a rate of speed in excess of the rate permitted by statute and dangerous to public safety. Held, the necessary malice may be implied from the doing of an unlawful thing from which injury may be reasonably apprehended. *State* v. *Schutte* (N. J.), 93 Atl. 112.

An act dangerous in itself done in reckless disregard of the rights of others is unlawful; and if injury would be the natural consequence of such an act and one is injured thereby, the aggressor is chargeable with the unlawful intent *Smith* v. *Commonwealth,* 100 Pa. St. 324; *Balee* v. *Commonwealth,* 153 Ky. 558, 156 S. W. 147; *Hill* v. *State,* 63 Ga. 578, 36 Am. Rep. 120; *Queen* v. *Martin,* L. R. 8 Q. B. D. 54. Careless or negligent driving resulting in a collision with a pedestrian and causing his death renders the wrong doer guilty of manslaughter. *Rex* v. *Walker,* 1 Car. & P. 320; *Rex* v. *Grout,* 6 Car. & P. 629. It appears that the intentional doing of an act which, by reason of its wanton or grossly negligent character, exposes another to personal injury and causes such injury, supplies the criminal intent. *Commonwealth* v. *Pierce,* 138 Mass. 165, 52 Am. Rep. 264; *Commonwealth* v. *White,* 110 Mass. 407.

The question presents itself, whether the intentional violation of a statute, thus constituting the act unlawful, will of itself supply a criminal intent sufficient to sustain a conviction of assault and battery. It was

held that one who while violating a speed ordinance injured another could not be convicted of assault and battery, since such an act being merely *malum prohibitum,* the criminal intent could not be implied. *Commonwealth* v. *Adams,* 114 Mass. 323, 19 Am. Rep. 362. The distinction between *malum prohibitum* and *malum in se,* though recognized by textwriters, is, it would seem, of little practical importance, as it is seldom if ever that an injury is sustained through the commission of an act merely *malum prohibitum* with no other concomitant element. See 1 BISHOP, NEW CRIMINAL LAW, 8 ed., § 333; see *Schultz* v. *State,* 89 Neb. 34, 130 N. W. 972. Where the element of negligence or carelessness is concurrent with the violation of the statute, the authorities uniformly hold a criminal intent to be implied. *Schultz* v. *State, supra.* "Inasmuch as recklessness or gross carelessness lies at the foundation of the charge against defendant, the fact that the act was done in violation of a city ordinance was proper evidence for the consideration of the jury on the question of negligence." See *Commonwealth* v. *Hawkins,* 157 Mass. 551, 32 N. E. 362; also, *Lane* v. *Atlantic Works,* 111 Mass. 136. The conclusion seems warranted that though the simple violation of a statute will not *ipso facto* supply the necessary criminal intent, it will furnish cogent proof of negligence and the resultant criminal responsibility.

CRIMINAL LAW—RAPE—KNOWLEDGE OF WOMAN'S MENTAL INCAPACITY.—The accused had sexual intercourse with a woman with her consent. The woman was of unsound mind but the accused did not know this fact. *Held,* accused is not guilty of rape. *State* v. *Schlichter* (Mo.), 173 S. W. 1072.

In all statutory rape cases the important question is the existence of facts bringing the act within the terms of the statute and not the knowledge of the guilty party of the facts. If the fact of insanity exists, that the defendant does not know of it is no defense. *People* v. *Griffin,* 117 Cal. 583, 49 Pac. 711, 59 Am. St. Rep. 216. An indictment was not defective for failure to state that accused had knowledge of the woman's insensibility caused by a drug administered to her. *Commonwealth* v. *Lowe,* 116 Ky. 335, 76 S. W. 119. The principal case follows a decision of its own State holding knowledge on the part of the accused is necessary. *State* v. *Warren,* 232 Mo. 185, 134 S. W. 522, 23 Ann. Cas. 1043. See, also, *Gore* v. *State,* 119 Ga. 418, 46 S. E. 671, 100 Am. St. Rep. 182. In statutory rape for having intercourse with a girl below the age of consent, it is uniformly held that it is rape though the accused believed her to be over the age. *Martin* v. *State* (Tex.), 165 S. W. 579. Even so where the girl told accused she was over the age. *Edens* v. *State* (Tex. Cr. R.), 43 S. W. 89. That the accused exercised ordinary diligence to ascertain her age and believed her over the age is no defense. *Manning* v. *State,* 43 Tex. Cr. Rep. 302, 65 S. W. 920. In all of these cases the accused commits an act which is *malum in se* and the intent to commit the crime is supplied, though accused did not know that the necessary facts existed. Just as in cases of fraud upon the woman, while she gives an apparent consent, yet there is no actual consent, as, where the woman thought the accused was her husband, he was guilty of rape. *State* v. *Williams,* 128 N. C. 573, 37 S. E. 952. Likewise where